THE NEW STRAITS TIMES, PRESS (MALAYSIA) BHD & ORS

v.

AHIRUDIN ATTAN

HIGH COURT MALAYA, KUALA LUMPUR
HISHAMUDIN MOHD YUNUS J
[CIVIL SUIT NO: S3-25-28-2007]
21 NOVEMBER 2007

CIVIL PROCEDURE: *Contempt of court - Order of committal, application for - Whether respondent breached undertaking given to High Court - Whether respondent's actions were of such nature that could be regarded as sub judice or prejudice fair trial of action - Order 52 r. 2(2) Rules of the High Court 1980 - Whether complied with - Whether applicants failed to disclose prima facie case of contempt of court*

The first applicant, a public listed company whose primary business is the publishing and selling of newspapers along with the second, third, fourth and fifth applicants ('the applicants') had jointly commenced an action against the respondent, a journalist and editorial consultant ('the S3 suit'). The said S3 suit was a claim for libel and malicious falsehood against the respondent in relation to various articles, comments and posts published by the respondent on his weblog called the "Rocky's Bru' weblog. The applicants in the said suit had applied for an interlocutory injunction to restrain the respondent from posting further or similar allegedly libelous statements concerning the plaintiffs. This interlocutory injunction application was presently pending, and it was in relation to this application that the undertaking of 29 January 2007 was given by both parties to the court, agreeing henceforth to not publish any articles, comments or posts regarding the dispute before the High Court that may be regarded as sub judice or that may prejudice the fair trial of the action. The applicants in the present proceeding alleged that the respondent had breached his undertaking given to the High Court on the mentioned date. It was contended by the applicants that the respondent was also guilty of contempt by maintaining a hyperlink to his weblog with the 'Walk With Us' weblog. Thus, the application before this court was an *ex parte* application pursuant

A to O. 52 r. 2 of the Rules of the High Court 1980 (RHC 1980) for an order for leave to commence committal proceedings against the respondent. The relief sought herein was for an order of committal to commit the respondent to prison for his various and several acts of contempt.

B

Held (dismissing *ex parte* application):

(1) The applicants have failed to explain clearly in what way the articles and posts were of such a nature that they could be said to be 'regarding the dispute presently before the High C Court'; or, in what way they could be regarded as being sub judice or that they may prejudice the fair trial of the action. Rule 2(2) of O. 52 RHC 1980 requires the applicants to set out in the supporting statement the grounds on which the committal was sought. The applicants have not explained the D grounds clearly and there was lacking in sufficient information. (para 13)

(2) The respondent could not be held liable over the contents of the Walk With Us weblog. He is neither the author nor the E publisher of that weblog. The Walk With Us weblog was an anonymous weblog. It was far fetched to contend that there was a republication by the respondent merely by reason of the hyperlink appearing in his weblog. There was only a 'passive' reference to the hyperlink: only the name/title of the hyperlink F 'Walk With Us' appeared on the right hand column of the weblog together with the names/titles of about 85 other hyperlinks. The applicants failed to disclose a *prima facie* case of contempt of court. (paras 18, 22 & 23)

G **Case(s) referred to:**

Hird v. Wood [1894] 34 SJ 234 ***(refd)***

International Telephone Link Pty Limited and Anor v. IDG Communications Limited & Anor [CP No. 344/97] ***(refd)***

Legislation referred to:

H Rules of the High Court 1980, O. 52 r. 2(2)

For the applicants - Rishwant Singh; M/s Zul Rafique & Partners

Reported by Suhainah Wahiduddin

I

JUDGMENT

Hishamudin Mohd Yunus J:

[1] The 1st applicant is a public listed company registered in Kuala Lumpur. The 1st applicant's primary business is the publishing and selling of newspapers, examples of which are the New Straits Times and the New Sunday Times.

[2] The 2nd applicant was at all material times the Deputy Chairman of the 1st applicant.

[3] The 3rd applicant was as at 27 June 2006 a director of the 1st applicant, and at all material times the Group-Editor-in-Chief of the 1st applicant.

[4] The 4th applicant is a director and Chief Executive Officer of the 1st applicant.

[5] The 5th applicant was at all material times the Group Editor of the New Straits Times and the director of English Publications with the 1st applicant.

[6] The respondent is a journalist and an editorial consultant. The respondent was at one point in time an Executive Editor of the Malay Mail and Sunday Mail, and was, at all material times, President of the National Press Club.

[7] The application that is now before me is an *ex parte* application pursuant to O. 52 r. 2 of the Rules of the High Court 1980. The applicants here seek an order for leave to commence committal proceedings against the respondent.

[8] The relief that would be sought in the committal proceedings, if leave were to be granted, is for an order of committal to commit the respondent to prison for his various and several acts of contempt on the following grounds:

(1) That there is a breach of the respondent's undertaking given to the High Court of Kuala Lumpur on 29 January 2007 in Civil Suit No: S3 23-2-2007; and

(2) That the respondent's action of linking his weblog to another weblog called 'Walk With Us' (http:walkwithus.wordpress.com).

The Breach Of Undertaking

[9] In order to understand better the nature of the undertaking, I need to dwell briefly on the background facts. The applicants have jointly commenced an action against the respondent *via* High Court, Kuala Lumpur, Civil Suit No. S3-23-2-2007 ('the S3 suit'). In that suit the applicants are the plaintiffs and the respondent the defendant. The S3 suit is a claim for libel and malicious falsehood against the respondent, Ahirudin bin Attan. The claim is in relation to various articles, comments and posts published by the respondent on his weblog called the 'Rocky's Bru' weblog.

[10] The plaintiffs in the S3 action have applied for an interlocutory injunction to restrain the respondent from posting further or similar allegedly libelous statements concerning the plaintiffs. This interlocutory injunction application is presently pending, and it is in relation to this application that the undertaking of 29 January 2007 was given by both parties to court. The terms of the undertaking given to court on 29 January 2007 by all parties in the S3 suit are as follows:

> Parties agree to henceforth not publish any articles, comments or posts regarding the dispute presently before the High Court in this action that may be regarded as subjudice or that may prejudice the fair trial of the action.

[11] The applicants in the present proceeding allege that the respondent has breached his undertaking given to this court on 29 January 2007 by publishing the following articles, comments and posts on his weblog titled "Rocky's Bru":

(a) An article titled 'Wrong Info on Kalimullah' dated 18 May 2007, and further publishing posts and comments thereto;

(b) An article titled 'Syed Ahmad Idid on Corruption' dated 21 May 2007, and further publishing posts and comments thereto;

(c) An article titled 'Samy does a Brenden Pereira' dated 10 June 2007, and further publishing posts and comments thereto;

(d) An article titled ''Kalimullah admits "It was incorrect"' dated 11 June 2007, and further publishing posts and comments thereto;

(e) An article titled 'Hisham's K&M, a year down the road' dated 8 July 2007, and further publishing posts and comments thereto; and

(f) An article titled 'Datuk Seri who?' dated 8 July 2007 and further publishing posts and comments thereto;

[12] I accept the applicants' contention that by virtue of the undertaking given by the respondent in the S3 action, it was incumbent on the respondent not to publish any articles, comments or posts regarding the dispute presently before the High Court in the S3 action that may be regarded as sub judice or that may prejudice the fair trial of the action.

[13] However, having carefully examined the supporting statement of the application (the statement made pursuant to sub-r. (2) of r. 2 of O. 52), in particular, para. 20, I am of the view that the applicants have failed to explain clearly in what way that the articles and posts are of such a nature that they can be said to be 'regarding the dispute presently before the High Court'; or, even assuming that they can be said to be 'regarding the dispute presently before the High Court', in what way that they can be regarded as being *sub judice* or that they may prejudice the fair trial of the action. Rule 2(2) requires the applicants to set out in the supporting statement the grounds on which the committal is sought. In the present case I am not satisfied that the applicants have explained the grounds clearly. There is lacking in sufficient information.

[14] In para. 21 of their supporting statement the applicants state:

> 21. The Applicants will refer to the Amended Statement of Claim filed in the S3 action at the hearing of this application for the details of the claim made therein and [will] compare [the] same [with] the New Articles published by the Respondent. The Applicants will point out the above and other instances where the Respondent breached its undertaking to Court.

[15] In my judgment, in an *ex parte* application for leave to institute committal proceeding, the details and the comparisons, which the applicants intend to rely on, must be set out in the supporting statement itself and not to be explained separately by way of submission by counsel from the bar (be it orally or in writing). Every essential particular must be in the supporting statement itself and verified by an affidavit. These requirements must be strictly complied with. In any case, the skeletal written submission (encl. A (1)) tendered by the learned counsel for the applicants, Encik Rishwant Singh, on the day of the hearing (20 September 2007), does not appear to contain the details or comparisons.

The 'Walk With Us' Weblog Hyperlink

[16] It is also the contention of the applicants that, independently of the above-mentioned undertaking, the respondent is also guilty of contempt by maintaining a hyperlink on his weblog with the 'Walk With Us' weblog. The applicants maintain that as a matter of law and fact, the respondent's act in referring to and linking to the 'Walk With Us' weblog from his Rocky's Bru weblog, is a republication of the contents of the 'Walk With Us' weblog on the Rocky's Bru weblog.

[17] A hyperlink works in the following way. The name/title of the website/weblog B appears on website/weblog A, and the reader can have direct access to website/weblog B simply by clicking on the name/title of website/weblog B. Hyperlinks are usually highlighted by means of colour or underlining.

[18] It is alleged by the applicants that the 'Walk With Us' weblog contains discussions of the S3 suit and criticisms of the plaintiffs (the applicants herein) in that suit (and, to a lesser extent, criticisms of the plaintiffs' solicitors and counsel). It is alleged that the contents of the Walk With Us weblog interfere with, and prejudice, the course of justice. In my judgment, the respondent cannot be held liable over the contents of the Walk With Us weblog. He is neither the author nor the publisher of that weblog. The Walk With Us weblog is an anonymous weblog. The applicants, however, contend that, although the respondent is not the author of the Walk With Us weblog, nonetheless, he must, as a matter of law, be taken to be the publisher of that weblog by reason of the hyperlink on his weblog which links the Walk With Us weblog with his weblog. For this proposition, the applicants rely on:

(a) the English Court of Appeal case of *Hird v. Wood* [1894] 34 SJ 234; and

(b) the unreported judgment dated 19 January 1998 of a Master of the High Court of Auckland, New Zealand, in a case known as *International Telephone Link Pty Limited and Anor v. IDG Communications Limited & Anor* [CP No. 344/97].

[19] In my opinion, it is far-fetched to contend that there is a republication by the respondent merely by reason of the hyperlink appearing in his weblog.

[20] To my mind, both the cases cited by learned counsel are irrelevant as the facts in those cases are different from the facts of the present case. In *Hird v. Wood* the facts were that a man sat near a placard and directed the attention of passers-by to the placard, which contained defamatory words. The court held that the conduct of the man amounted to publication of the words in the placard. In *International Telephone Link*, the issue was whether the references in an article to a website (which allegedly contained defamatory statements) amounted to a republication of the website, and the Master, applying *Hird v. Wood*, answered the question in the affirmative. It is significant to observe that neither of these cases concern hyperlinks. In *International Telephone Link* there are 'active' references to the website in question by the writer of the article. The article states:

> Kiwi uses Websites to outline troubles with entrepreneur.
>
> New Zealander David Leng, who claims he has been misled by an Australian entrepreneur, has used the Web to spell out details of a complex series of transactions which he says have left him and other locals seeking financial redress.
>
> Because of the way the contract was set up, Leng claims it is almost impossible to sue. Thus the multi-layered Website "as a warning to others".
>
> …
>
> David Leng's Website is www.nzpost.com/itl/introd.htm.

[21] In the present case, however, there is only a 'passive' reference to the hyperlink: only the name/title of the hyperlink "Walk With Us" appears on the right hand column of the weblog together with the names/titles of about 85 other hyperlinks.

[22] In conclusion, I hold that the supporting statement of the applicants as set out pursuant to sub-r. (2) of r. 2 fails to disclose a *prima facie* case of contempt of this court.

[23] Accordingly, this *ex parte* application is dismissed.